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EXAMINER	
BOVEJA, NAMRATA	
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Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CARLOS G. GONZALEZ-RIVAS

Appeal 2009-011637
Application 09/882,511
Technology Center 3600

Before JAMES D. THOMAS, ANTON W. FETTING, and JOSEPH A. FISCHETTI, *Administrative Patent Judges.*

FETTING, *Administrative Patent Judge.*

DECISION ON APPEAL[1]

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE[2]

Carlos G. Gonzalez-Rivas (Appellant) seeks review under 35 U.S.C. § 134 (2002) of a final rejection of claims 1-28, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b) (2002).

The Appellant invented a way of using a displayed website logo on a television commercial to let consumers log onto the website and participate in interactive online contests (Specification 1:¶ 0001).

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below [bracketed matter and some paragraphing added].

> 1. A method of increasing consumer awareness of products or services which are advertised in television commercials, comprising:
>
> [1] enhancing a plurality of television commercials by displaying a marketing website logo during each of said plurality of enhanced television commercials;
>
> [2] providing a marketing website which is associated with and identified by said marketing website logo and which is accessible by consumers;

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[2] Our decision will make reference to the Appellant's Appeal Brief ("App. Br.," filed September 5, 2008) and the Examiner's Answer ("Ans.," mailed March 6, 2009).

[3] displaying to a consumer who has entered said marketing website in response to viewing a particular enhanced television commercial

a list of television networks on which enhanced television commercials have aired, and

prompting the consumer

to select the particular television network on which the consumer viewed the particular enhanced television commercial;

[4] displaying to the consumer

a list of television shows broadcasted by the particular television network during which television shows enhanced television commercials have been broadcasted, and

prompting the consumer

to select the particular television show during which the consumer viewed the particular enhanced television commercial;

[5] displaying to the consumer

a list of enhanced television commercials which were broadcasted during the particular television show, and

prompting the consumer

to select the particular enhanced television commercial; and

[6] providing a game or contest for the consumer to play

which game or contest provides information on or relates to the particular product or service advertised by the particular enhanced television commercial.

The Examiner relies upon the following prior art:

Lesandrini US 2003/0036944 A1 Feb. 20, 2003

Bacardi Brings Out the Bottle in Cable-TV Ad for Amaretto - Spot Is Firm's First to Blatantly Display Product O'Connell May 2001

Job-Hunting Web Sites' Ads Will Duel at Super Bowl Silverman et al. Jan. 2001

Put your hiring into high gear! Introducing Monster Momentum™ *http://www.web.archive.org/web/20010418150929/momentum.*Monster.com/ (last visited Apr. 18, 2001).

Claim 7 stands rejected under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim the invention.[3]

Claims 1-3, 6, and 8-11 stand rejected under 35 U.S.C. § 103(a) as unpatentable over O'Connell, Silverman, and Official Notice.

Claims 4, 5, and 7 stand rejected under 35 U.S.C. § 103(a) as unpatentable over O'Connell, Silverman, Monster.com, and Official Notice.

Claims 12-26 stand rejected under 35 U.S.C. § 103(a) as unpatentable over O'Connell, Silverman, Lesandrini, and Official Notice.

Claim 27 stands rejected under 35 U.S.C. § 103(a) as unpatentable over O'Connell, Silverman, Monster.com, and Official Notice.

Claim 28 stands rejected under 35 U.S.C. § 103(a) as unpatentable over O'Connell, Monster.com, and Official Notice.

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[3] A similar rejection of claim 4 was withdrawn at Answer 28.

ISSUES

The issue as to indefiniteness hinges on whether one of ordinary skill would have understood how a logo could identify a type of printed material. The issue of obviousness hinges on whether the Examiner presented evidence that the nested selection in the claims were known to those of ordinary skill.

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Facts Related To Differences Between The Claimed Subject Matter And The Prior Art

01. The Examiner presented no findings as evidence that it was known to use a series of nested prompts to obtain information.

ANALYSIS

Claim 7 rejected under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim the invention.

Claim 7 recites displaying a readily recognizable logo or other indicia that identifies a type of printed material. The Examiner found that a logo does not identify the purpose of a printed material. Answer 28-29. The Appellant responds that Fig. 8 Reference 102 shows a biller logo that identifies a bill as a type of printed material. Appeal Br. 25. We agree that the contents of a logo can express many things; including a type of printed material and that the figure in the Appellant's disclosure is such an example.

Claims 1-28 rejected under 35 U.S.C. § 103(a) as unpatentable over O'Connell, Official Notice, and various combinations of Silverman, Monster.com, and Lesandrini.

All of the claims recite, using a website and indicia, providing information, a contest, or a game. The Examiner found that the references described these limitations. All of the claims except for claim 27, recite a three step nested query to determine how a commercial was found. Claim 27 recites that the query occurs with a series of screens. The Examiner took Official Notice of the notoriety of asking how a consumer found out about a marketing promotion. The Examiner also took notice that it was predictable to point to a query result with a mouse. Answer 4-6.

The Appellant argues that there is a lot more in the claims and so the Official Notice is improper and the Examiner failed to present a prima facie case. Appeal Br. 18-23. The Examiner responded that the Appellant's traversal of the Official Notice is improper. Answer 26. While we agree with the notoriety of querying for how a consumer found out about a promotion, and that the Appellant has not properly traversed the Official Notice, the Examiner's response misses the point.

The Examiner presented no findings as evidence that it was known to use a series of nested prompts to obtain information. FF 01. This is the import of the Appellant's arguments, *viz.* there is a lot in those limitations (*e.g.* steps [3]-[5] of claim 1) that the Examiner made no findings toward. We must agree with the Appellant that the Examiner failed to present a prima facie case of obviousness as not all the limitations were shown to be known.

CONCLUSIONS OF LAW

Rejecting claim 7 under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim the invention is in error.

Rejecting claims 1-28 under 35 U.S.C. § 103(a) as unpatentable over O'Connell, Official Notice, and various combinations of Silverman, Monster.com, and Lesandrini is in error.

DECISION

To summarize, our decision is as follows.

- The rejection of claim 7 under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim the invention is not sustained.
- The rejection of claims 1-3, 6, and 8-11 under 35 U.S.C. § 103(a) as unpatentable over O'Connell, Silverman, and Official Notice is not sustained.
- The rejection of claims 4, 5, and 7 under 35 U.S.C. § 103(a) as unpatentable over O'Connell, Silverman, Monster.com, and Official Notice is not sustained.
- The rejection of claims 12-26 under 35 U.S.C. § 103(a) as unpatentable over O'Connell, Silverman, Lesandrini, and Official Notice is not sustained.
- The rejection of claim 27 under 35 U.S.C. § 103(a) as unpatentable over O'Connell, Silverman, Monster.com, and Official Notice is not sustained.

- The rejection of claim 28 under 35 U.S.C. § 103(a) as unpatentable over O'Connell, Monster.com, and Official Notice is not sustained.

REVERSED

mev

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